

STATE OF ALABAMA
ALABAMA SECURITIES COMMISSION

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| IN THE MATTER OF: |) | |
| |) | ADMINISTRATIVE ORDER |
| BARRY HUBERT BYNUM |) | NO. CO-2015-0013 |
| ESTATE SECURITY TRUST INC. |) | |
| |) | |
| |) | |
| <u>RESPONDENTS</u> |) | |

CONSENT ORDER AS TO RESPONDENT BARRY HUBERT BYNUM

The Alabama Securities Commission ("Commission"), having the authority to administer and provide for the enforcement of all provisions of Title 8, Chapter 6, Code of Alabama 1975, the Alabama Securities Act ("ACT"), upon due consideration of the subject matter hereof, having confirmed information of the offer for sale of securities, into, within or from the state of Alabama, has determined as follows:

RESPONDENT

1. BARRY HUBERT BYNUM, ("BYNUM"), at all times relevant, was a Tennessee resident and owner of Estate Security Trust, Inc. ("EST") with a residential address of 181 Butler Rd., Pinson, TN 38366. Records on file with the Alabama Department of Insurance indicate that BYNUM held a Producer's license. On March 1, 2015, his license reflected an "inactive" status.

STATEMENT OF FACTS

2. On or about February 14, 2014, BYNUM traveled to Alabama and met with an 88 year old Alabama resident at her home to discuss investment opportunities. On the same day, he sold her an investment with his company, EST, in the amount of \$100,000. The investment was funded via two checks, each dated February 14, 2014, and payable to "Estate Security Trust." The word "Investment" was written in the memo line of both checks.

3. In exchange for her investment funds, the Alabama resident received a document entitled "Certificate of Investment." The Certificate was issued on EST letterhead dated February 15, 2014, and states that the Alabama resident "has deposited \$100,000 in an investment certificate account with EST." The terms of the investment are described in the Certificate as follows:

The terms [sic] of the account is for thirty six months with a maturity date of February 15, 2017. This account will automatically renew on this date unless depositor directs otherwise at that date. Account is at a fixed rate of 5% for thirty six months, [sic] if account is renewed at its maturity date the rate may change at that time but must be with the consent of each party. All deposits are held in a federal insured bank under EST and are insured up to \$250,000.00. By FDIC. [sic] Interest will be paid at maturity of this certificate and is Non Negotiable [sic] and Non Transferable [sic]. Investor will have the right each contract year to withdraw any interest earned for that year , or may allow any interest to stay on deposit until maturity without any tax report until withdrawn!

The "Certificate of Investment" was signed by BYNUM.

4. In early 2015, the Alabama resident's health declined. A family member holding a "Power of Attorney" ("POA") to act on behalf of the Alabama resident contacted BYNUM. The family member informed BYNUM that, due to health concerns, there was an immediate need for money and made a request to BYNUM to refund the investment. BYNUM responded that the money was in a land trust and that it would be June before he could return the money.

5. The POA made numerous requests to have the money returned, but each time she was told by BYNUM that he did not have access to the funds. Specifically, in June 2015, the POA requested that BYNUM refund the investment. BYNUM again advised the POA that the money was invested in land and that BYNUM had no money available to refund. BYNUM stated it would take several more months to liquidate and return the investment funds.

6. During the course of the investigation, the Commission learned that on May 20, 2015, BYNUM filed a Chapter 13, Bankruptcy in the United States Bankruptcy Court Western District of Tennessee, Case Number 15-11113. A review of BYNUM's bankruptcy documents revealed no listing of the Alabama resident as a creditor. BYNUM

stated in the Bankruptcy documents that EST had not operated in the last 3 years. BYNUM also indicated "None" as to all questions regarding records of his business. A review of the State of Tennessee's Secretary of State web site revealed that on August 8, 2010, BYNUM filed a status change for ETS from Active to Inactive – dissolved (administrative). Additionally, the website listed a January 20, 2015, ETS filing status change from Inactive – dissolved (Administrative) to Inactive – revoked (Revenue). BYNUM never disclosed this information to the Alabama resident or the POA. The Commission staff further contacted the Tennessee Department of Commerce & Insurance Securities Division and was informed that neither ETS nor BYNUM is registered in any capacity to offer or sale securities.

7. A review of the files of the Registration Division of the Alabama Securities Commission was conducted on July 14, 2015. It disclosed no record of registration, or exemption from registration, for the security offered and sold by BYNUM or EST.

8. On the same day, a review was conducted to determine whether BYNUM or EST were registered to conduct business in Alabama as a broker-dealer agent, investment advisor, or investment advisor representative, as required by law. No records were disclosed indicating a registration for either BYNUM or EST. A search of central records depository (CRD) revealed the same.

CONCLUSIONS OF LAW

9. Pursuant to Section 8-6-2(10), Code of Alabama 1975, the definition of a security includes "Evidence of Indebtedness." The "Certificate of Investment" issued by ETS and signed by BYNUM, is a security under the Act.

10. Pursuant to Section 8-6-2(5), Code of Alabama 1975, the definition of an "issuer" includes every person who proposes to issue, or has issued, any security. ETS, by issuing a security, to wit: a "Certificate of Investment" in ETS, is an "issuer" as defined by the Act.

11. Pursuant to section 8-6-2(2) Code of Alabama 1975, the definition of "agent" includes any individual who represents a dealer or issuer in effecting or attempting to effect sales of securities. BYNUM, by representing ETS in effecting the sale of a security, to wit: a "Certificate of Investment" in ETS, acted as an agent of ETS, as defined by the

Act.

12. Pursuant to section 8-6-3(a) Code of Alabama 1975, it is unlawful for any person to transact business in the state as a dealer or agent for securities unless he is registered under the Act.) BYNUM as an agent of ETS effected a securities transaction without benefit of registration, in violation of the Act.

13. Pursuant to section 8-6-4, Code of Alabama, 1975, it is unlawful for any person to offer or sell any security in this state unless said security: (1) is registered under the Act; (2) the security is exempt from registration under section 8-6-10; or (3) the transaction is exempt under section 8-6-11. BYNUM offered and sold a security, to wit: a "Certificate of Investment" in ETS, that was neither registered nor subject to a perfected exemption from registration, in violation of the Act.

CONSENT ORDER

WHEREAS, RESPONDENT Barry Hubert Bynum states that the information and assertions presented to the Commission during its investigation of this matter are true and correct; that RESPONDENT understands the Commission's reliance upon such information and assertions in its determination to accept this Order; and that should this information or these assertions prove to be incorrect or misrepresented, the Commission may seek such other administrative, civil, or criminal remedies that may be available to it under the provisions of the Act;

WHEREAS, the Commission finds this Order necessary and appropriate in the public interest for the protection of investors, and consistent with the purposes fairly intended by the policies and provisions of the Act;

WHEREAS, the Commission, in resolving this matter, considered the remedial acts and cooperation of the RESPONDENT;

WHEREAS, RESPONDENT desires to resolve this matter without further litigation and prior to the entry of a final order by the Commission, and hereby stipulates and agrees to the following:

1. That the RESPONDENT is barred from participation in the securities industry in this State and prohibited from the offer or sale of any security, into, within or from the state of Alabama.

2. That RESPONDENT understands that he has a right to notice and a formal hearing. By entering into this Consent Order, Respondent voluntarily and expressly waives the right to notice and a formal hearing and consents to the entry of this Order.

AGREED AND CONSENTED to on date indicated:

RESPONDENT



BARRY HUBERT BYNUM
ESTATE SECURITY TRUST, INC.

DATE: 11-17-15

APPROVED on this 9th day of November*, 2015.



ALABAMA SECURITIES COMMISSION
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BY: 

Joseph P. Borg
Director

*TYPO: 'November' should read 'December.'